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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

COMMENTS OF ABC, INC.

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Table of Contents

Introduction and Summary.....	1
I. Responsibility for Captioning.....	4
II. Transition Rules for Closed Captioning.....	5
A. New Programming.....	5
B. Library Programming.....	7
III. Exempt Programming.....	9
A. Commercial Advertising.....	9
B. Interstitials and Promotional Advertisements.....	10
C. Political Advertising.....	11
D. Overnight News and Regional Sports Programming.....	11
IV. Quality Standards.....	13

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To: The Commission

COMMENTS OF ABC, INC.

ABC, Inc. ("ABC"), a wholly-owned subsidiary of The Walt Disney Company, submits herewith its Comments in response to the Notice of Proposed Rule Making ("Notice") in the above-entitled proceeding.¹ ABC owns and operates the ABC Television Network and ten television broadcast stations.

¹ MM Docket No. 95-176, Notice of Proposed Rulemaking, FCC 97-4 (released January 17, 1997).

Introduction and Summary

ABC supports the Commission's effort to make video programming accessible to all Americans. Indeed, the company and its predecessor, American Broadcasting Companies, Inc., has been one of the primary forces behind the development and application of closed-captioning for broadcast television.² We also agree with the Commission -- and with the principle underlying the section of the Telecommunications Act concerning mandatory captioning exceptions -- that a balance must be struck between providing disabled Americans with access to television programming and the costs imposed on program producers, suppliers and distributors in providing such access.³

If the Commission places the obligation to caption on program providers, as it proposes to do in the Notice, the Commission should recognize the fact that program providers will be relying on the performance of third parties to fulfill their captioning obligation. A program provider should not be sanctioned by the Commission for distribution of uncaptioned programming where the

² See Comments of Capital Cities/ABC, Inc. in MM Docket No. 95-176 (filed March 15, 1996) ("ABC Comments") at 3-5.

³ Notice, par. 2. See Telecommunications Act, sections 305(d) and (e).

failure was the fault of a program producer or owner.

ABC agrees with the Commission's proposal that new captioning requirements should be phased in over a number of years. If the Commission declines to exempt from obligatory captioning programs with limited viewership such as network regional sports, locally-produced sports and overnight network news programs, we would urge that the Commission adopt the ten-year phase-in proposed in the Notice. The administrative and financial burden of adding captions to hundreds of hours of such programming broadcast each year justify a lengthy period to achieve 100% captioning.

ABC believes that imposing captioning requirements on "library programming" would impose an undue burden on video program distributors and providers. There are thousands of hours of uncaptioned old video material available for distribution, but much of it likely will not be seen by viewers if program owners or providers must add captioning. We submit that in time the marketplace can be relied upon to cause most library programs to be captioned to make them more attractive to a broad range of viewers and competitive with new, captioned programs.

ABC proposes that the Commission exempt several categories of programming from the mandatory captioning requirement because the expense and administrative burden of captioning outweighs the

potential benefits of adding captions: commercial advertising, interstitials and promotional announcements, overnight news, regional and locally-produced sports coverage. Where distribution is relatively narrow and viewership is low, and where programs, such as sports and news, do not lend themselves to repeat distribution, the Commission should avoid imposing the burden of captioning that might drive such programming out of circulation. In addition, the substantial levels of voluntary closed captioning supplied by broadcast networks and stations suggest that the marketplace is likely to respond to the incentive to reach the maximum number of viewers by adding captions.

Finally, ABC concurs with the Commission that it should not impose accuracy or quality standards on video captioning. The captioning industry is still in its youth, and the new captioning requirements will spur substantial growth and technical development. The Commission is correct to allow the captioning and video programming industries time to develop the most efficient, high quality captioning methods appropriate for various programs without regulatory restraint.

I. Responsibility for Captioning

The Commission proposes to place the responsibility of

complying with closed captioning rules on "video programming providers," defined as "entities who provide video programming directly to a customer's home, regardless of the distribution technologies employed."⁴ Were the Commission to place the obligation to supply captions at the individual provider level, we believe that the video provider must be given considerable flexibility in performance where they rely on third parties to supply programs with captioning. If a television station enters a contract with a program producer that requires the producer to add closed captions, the station should not be held accountable if the producer fails to caption individual programs or, for any other reason beyond the station's control, the programs cannot be broadcast with captions.

II. Transition Rules for Closed Captioning

A. New Programming

We agree with the Commission that a gradual phase-in of closed captioning is necessary to allow captioning services to grow to meet demand, to give program producers or providers time to

⁴ Notice, par. 28. We construe the Commission's definition to exclude from any captioning requirement the second audio channel carried on some video programming.

allocate resources to captioning and develop arrangements with captioners, and to avoid having captioning requirements reduce or eliminate availability of certain kinds of programs to viewers.⁵ In addition, phasing in captioning requirements will allow program producers or providers to forge relationships with sponsors and to refine the technical aspects of video captioning. As we pointed out in our previous comments in this proceeding, certain television sets contain faulty caption decoding circuitry.⁶ Advances in computer voice recognition software and other technical improvements may make closed-captioning considerably less expensive over the course of a phase-in period. Finally, although closed captioning is now added to programs under grants from the U.S. Department of Education, there is no guarantee that those funds will continue to be appropriated at current levels.⁷

⁵ See Notice, par. 40. Thus, for example, producers of public affairs programs that traditionally receive minimal sponsorship revenue and special-interest programs with relatively narrow distribution could choose to stop production of such material if obliged to arrange captioning so quickly as to render production economically unfeasible.

⁶ See ABC Comments at 13 n. 22.

⁷ See ABC Comments at 7 n. 11; Notice, par. 46. Recently the Department of Education has made increased private sector co-payments to cover captioning costs a condition to eligibility for government captioning grants.

We believe the Commission's proposal for an eight-year phase in (25% after two years, 50% after four years, 75% after six years and 100% after eight years) is the minimum time required to allow the video industry to reach total captioning without undue disruption. If the Commission declines to exempt from the captioning requirement network overnight news and regional sports presentations, locally-produced sports programs, and other types of programs in which the burden of captioning is relatively large compared to the scope of distribution and viewership levels, we would urge that the Commission adopt the ten-year phase in for 100% captioning. The administrative burden and expense of adding captions to those programs, adding hundreds of hours of captioning to annual program schedules, will be considerable and justify a lengthy time to put captioning into place.⁸

Finally, we submit that the Commission should use an annual average to measure compliance with captioning requirements. Annual review would allow parties flexibility during the phase in period to select programs most suitable for captioning and make the most

⁸ It should be noted that the broadcast networks and stations have historically supplied a substantial level of voluntary closed captioning. See Report, MM Docket NO. 95-176, 3 CR 1058 (released July 29, 1996), pars. 59-69. The record suggests that the Commission need not expect resistance from those parties to the new captioning requirements.

efficient use of captioning resources.

B. Library Programming

The Commission seeks comment on whether "library programming" -- programming first published or exhibited prior to the effective date of the new captioning rules -- should be made subject to any closed captioning requirement.⁹ We submit the answer is "no," both because of the massive amount of video material involved and based on our belief that in time the marketplace can be relied upon to cause most programming offered to viewers to include captioning.

As the Commission points out, the amount of uncaptioned library programming is enormous: old movies, off-network and syndicated fare, and locally-produced public affairs, news, public access, educational and children's programming.¹⁰ It is likely that imposing a requirement that such programming be captioned would cause a substantial proportion of those works to be simply withdrawn from distribution. Captioning long after programs are produced is expensive and difficult -- it is unlikely that scripts

⁹ Notice, pars. 51, 58.

¹⁰ Notice, par. 57.

would be available for "off line" or "live display" captioning.¹¹ Parties who acquired such programs did so without considering that they would need to spend additional funds to caption them before distribution.

We think the goal of maximum access to library programming is better served by imposing no captioning requirement. Over time, as the captioning requirements for new programming kick in, the proportion of video works already captioned will increase. Newer, already-captioned programs will presumably be preferred by program providers as most library programs lose appeal with age. In addition, as the proportion of new programs with captioning delivered to the public approaches 100%, owners of library programs will likely find it worthwhile to add captioning to make them more attractive to a broad range of distributors and viewers.

Finally, we expect that imposing a captioning requirement on library programming would create an intolerable administrative burden for video program owners and providers and for the Commission. For a program provider, it would mean keeping a complicated running calculation of what percentage of previously acquired and distributed programming was captioned. For the

¹¹ See Notice, pars. 18-19; ABC Comments at 4.

Commission reviewing a complaint of failure to caption, determining whether a program qualifies as library material and calculating the owner's or provider's percentage of captioned library material would be a daunting task.

We believe that the burden of compliance and enforcement of a captioning requirement on library programming would outweigh any benefit gained. The likelihood is that such a requirement would drive library programming out of circulation over the short term, and over the long term we expect that the relatively few library programs still being distributed will be captioned to enable them to compete in a market of mostly new, captioned programs.¹²

III. Exempt Programming

A. Commercial Advertising

We propose that the Commission exempt short-form commercial advertising from the new closed captioning rules.¹³ For commercials

¹² We would support a rule requiring program providers to pass through captions that are included in library programs provided by others. Cf. 47 C.F.R. §76.606 (requiring cable systems to pass through captioning).

¹³ The Commission makes a distinction between short form (traditional commercials) and long form (infomercials) advertising. Notice, pars. 77-78. As to the latter, where infomercial producers buy time on broadcast stations, the stations have no control over whether the program is captioned. In such cases there should be no

produced for small-market video outlets the cost of captioning may exceed the cost of producing the commercial. Regardless of the breadth of distribution, many commercials have a relatively short shelf life. It may not be economically feasible for an advertiser to produce new spots to meet changing market conditions if the cost of captions are added.

There are also practical reasons why advertisements should be exempt. Advertisers often deliver spots to television stations shortly before air. Stations should not be obliged to add captions at the last minute. In addition, inserting live captions into brief advertisements is not feasible because the last three-four seconds of the commercial message would be lost.¹⁴

It is also doubtful that imposing a captioning requirement on commercials, and adding the administrative and enforcement burdens that come with such a requirement, is necessary to achieve access for the hearing impaired. Advertisers have an incentive to reach as many potential customers as possible. As the Commission points out, as the proportion of video programming including closed

obligation to caption placed on the program provider.

¹⁴ See Notice, par. 20.

captions grows, uncaptioned commercials will appear inconsistent with the surrounding captioned programming, adding further encouragement to advertisers to caption.¹⁵

B. Interstitials and Promotional Advertisements

The Commission has tentatively concluded that the burden of requiring captioning of interstitials (such as network and station identification) and promotional advertisements outweighs the benefits that would flow from such a requirement. We agree. Such materials generally provide their information in graphic form, leaving little need for captioning. In addition, program promotions are made, displayed and discarded on almost a daily basis. The money spent on captioning such ephemeral material would be better spent on new program captioning.

C. Political Advertising

Like commercial advertisers, political advertisers likely have a strong incentive to caption their spots to reach the maximum number of viewers. Considering the presence of that incentive, it is questionable whether the Commission needs to impose a captioning

¹⁵ Notice, par. 77.

requirement on political commercials.

We believe that if such a requirement were imposed, it could not lawfully be applied to program providers because of the "anti-censorship" provision of the Communications Act.¹⁶ Because providers are not allowed to make any changes to a political advertisement, they could not add captions.

D. Overnight News and Regional Sports Programming

In our earlier comments in this proceeding, ABC proposed that two categories of network programming be exempted from closed captioning requirements: overnight news and regional sports coverage. We reiterate the proposal here on the ground that the cost of live captioning is not warranted by the relatively small viewership and low advertising revenues generated by that programming. In addition, unlike entertainment programming, neither news nor live sports programs are suitable for secondary distributions, meaning that the cost of captioning must be recovered in the initial distribution.

The ABC Network offers its affiliated stations World News Now, a two-hour rotating block of news programming available for

¹⁶ 47 U.S.C. §315.

broadcast between 2:00 AM and 6:00 AM on weekday mornings.¹⁷ The program is carried in only about 84% of the country (and in some markets it is carried for only one hour). The household rating for World News Now in November 1996 was only .8. That rating is roughly one-fifth of the 4.3 rating during the same period for ABC's Good Morning America, broadcast by ABC affiliates covering over 99% of the country during the week between 7:00 AM and 9:00 AM.

World News Now includes about 1000 hours annually of video material. Live captioning that material would add about \$650,000 to the cost of producing the program at average live captioning rates.¹⁸

Similarly, requiring live captioning of ABC's regional college sports coverage would impose a substantial financial burden. In the 1996-97 television season, ABC carried about 240 hours of college football and basketball game coverage in multiple regional feeds. Contrary to the Commission's suggestion in the Notice, this coverage does not "involve major league sports teams."¹⁹ ABC's

¹⁷ The two-hour block of news is updated with new material as events require.

¹⁸ See Notice, par. 20.

¹⁹ Notice, par. 84.

regionalized coverage in the recent season offered as many as seven games at one time. It is difficult to justify adding up to seven times the captioning cost where each game is delivered to only a part of the country, particularly in view of the fact that much of the information within sports programming is, by its nature, accessible visually. The alternative, if closed captioning is mandatory for regionalized college sports coverage, may be more national coverage of single games by the network. Such coverage can more easily support live captioning costs but it would naturally fail to serve the regional college-team interests around the country.²⁰

If the Commission is not disposed to exempt overnight news or regional college sports coverage from the captioning requirement, we urge the Commission to establish a phase in period of at least ten years. That time is necessary to allow the network and the captioning industry to make arrangements to take on the substantial task of adding live captioning to the many hundreds of hours of overnight news and regional sports coverage distributed by ABC each year.

²⁰ As the Commission suggests, requiring captioning of high school or college sports produced at the local station level would be unduly burdensome and should be exempted from captioning requirements. Notice, par. 84.

IV. Quality Standards

We concur with the Commission's proposals concerning captioning quality. On the technical side, it makes sense to require that parties in the video program production and distribution chain retain and pass on any captioning already included in programs they receive from others.²¹

On the "non-technical" side, we agree with the Commission that, at least at this initial stage of mandatory captioning, there should be no regulations specifying accuracy and quality standards for closed captions.²² As mandatory captioning is phased in, considerable efforts by program producers, providers and captioners will be necessary to arrange the most efficient means to deliver captioned programs to the public. The Commission should allow time for those arrangements to be made and tried before embarking on any assessment of the need for quality standards.

We particularly endorse the Commission's proposal to leave the method of captioning to the responsible party. All of the ABC-owned stations caption their local news programs, but some use "electronic news room" captioning for some or all of their local

²¹ See Notice, par. 110.

²² See Notice, pars. 111-119.

news programs where they have not been able to find sponsors for the captioning.²³ If the Commission declared electronic news captioning an inadequate captioning method, it is not certain that all the news programs would have live captioning added, thus resulting in a net loss of access. The Commission is correct to allow parties time to find the most efficient and high quality methods to deliver captions to viewers.

²³ See Notice, par. 121.

Respectfully submitted,

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